

APPENDIX B: INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA)¹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected economic impact on small entities by the policies and proposals in this Second Further Notice of Proposed Rulemaking (Second FNPRM) in the Administration of the North American Numbering Plan, Carrier Identification Codes (CICs). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. A copy of this Second FNPRM, including the IRFA, shall be sent to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, this Second FNPRM and IRFA will be published in the Federal Register. See id.

A. Need for and Objectives of Proposed Rule

2. Inquiries by Commission staff regarding the status of LEC conversion to accept four-digit CICs reveal that some independent incumbent LECs in rural and isolated areas do not provide equal access. Some of those LECs' end offices are equipped with stored program-controlled (SPC) switches, but the LECs have never received a bona fide request to provide equal access. In other instances, the LECs' end offices are not equipped with SPC switches and, therefore, the LECs are not required to convert to equal access according to a specific timetable, even if a LEC received a reasonable request for equal access. The Commission recognizes, therefore, that a requirement that all LEC end office switches be upgraded to accept four-digit CICs by January 1, 1998, may have the unintended effect of requiring those LECs that have never received a bona fide request for equal access or that are not subject to a specific timetable for providing equal access nonetheless to upgrade their end offices to offer equal access by January 1, 1998. The Commission notes that such a requirement would modify the Commission's equal access implementation schedule for non-GTE independent telephone companies, set by the 1985 Independent Telephone Company Equal Access Report and Order. Noting that more than twelve years have passed since the adoption of the Independent Telephone Company Equal Access Report and Order, the Commission, in the Second FNPRM, tentatively concludes all LEC end offices, including those LECs whose end offices are equipped with SPC switches, but have not received a bona fide request for equal access and those LECs whose end offices are equipped with non-SPC switches, should nevertheless be required to provide equal access. This requirement also would apply to LECs who may have received a waiver of the Commission's equal access rules, to the extent those waivers remain in place. The Commission tentatively concludes that LECs with SPC switches that have not received a bona fide request for equal access should be required to upgrade their facilities to provide equal access and to accept four-digit CICs within three years of the effective date of an Order adopted in this proceeding. The Second FNPRM further tentatively concludes that LECs whose end offices are equipped with non-

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601, et seq., has been amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

SPC switches should be required to provide equal access and to convert their switches to accept four-digit CICs when they next replace their switching facilities.

3. The Commission also tentatively concludes that requiring LECs whose end offices are equipped with SPC switches to upgrade their facilities to enable them to offer equal access, even if they have not received a request for equal access, and LECs whose end offices are equipped with non-SPC switches to convert their facilities to provide equal access, is not inconsistent with the Commission's general goal, expressed in the Independent Telephone Company Equal Access Report and Order, that equal access occur as soon as practicable, regardless of whether a request has been made for equal access, and regardless of the type of switch with which an end office is equipped. Moreover, the Commission stated, in the Independent Telephone Company Equal Access Report and Order, that where generic software is available, the telephone company should endeavor to make the necessary conversions in less than three years. See Second FNPRM at para. 85. The Commission notes that the responses to its inquiries indicate that the four-digit CIC software generally is included in equal access software packages developed since 1995. The Commission states that commenters that oppose the tentative conclusion should discuss why a twelve year period of time in which to convert to provide equal access has been insufficient and should propose specific alternatives to the Commission's proposal. See Second FNPRM at paras. 84-86.

B. Legal Basis

4. Authority for actions proposed in this Second FNPRM may be found in: Sections 1, 4(i) and (j), 201-205, 218 and 251(e)(1) of the Communications Act of 1934 as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201-205, 218 and 251(e)(1).

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

5. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and the same meaning as the term "small business concern" under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities.² Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).³ The SBA has defined companies listed under Standard Industrial Classification (SIC) categories 4812 (radiotelephone communications) and 4813 (telephone communications, except radiotelephone)

² Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after an opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

³ Small Business Act, 15 U.S.C. § 632 (1996).

to be small entities when they have 1500 or fewer employees.⁴ These standards also apply in determining whether an entity is a small business for purposes of the RFA.

6. Because the small incumbent LECs that would be subject to this proposal are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."⁵ Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs.⁶ Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."⁷

7. The proposal made by the Commission in this Second FNPRM will apply to local exchange carriers. We seek comment on whether other entities should be included in our final regulatory flexibility analysis.

8. Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small entity specifically applicable to providers of local exchange services. The closest applicable definition is that under SBA rules for telephone communications, except radiotelephone, SIC 4813, which defines a small entity as one with 1500 or fewer employees. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange service.⁸ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with any more certainty the number of LECs that would qualify as small business concerns. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the proposal in this Second FNPRM.

⁴ See 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Codes 4812 and 4813 (SIC 4812 and SIC 4813, respectively).

⁵ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) (First Interconnection Order), motion for stay of the FCC's rules pending judicial review denied, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order, 11 FCC Rcd 11754 (1996), partial stay granted, Iowa Utilities Board v. FCC, No. 96-3321, 1996 WL 589204 (8th Cir. Oct. 15, 1996) (Iowa Utilities Board v. FCC) at paras. 1328-1330 and 1342.

⁶ See id. at para. 1342.

⁷ See id.

⁸ Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

9. The proposal in the Second FNPRM, if adopted, would require that LECs with SPC switches that have not received a bona fide request for equal access should upgrade their facilities to provide equal access and to accept four-digit CICs within three years of the effective date of an Order adopted in this proceeding. The proposal also would require that LECs whose end offices are equipped with non-SPC switches should provide equal access and to convert their switches to accept four-digit CICs when they next replace their switching facilities. See Second FNPRM at paras. 84-85.

E. Steps Taken to Minimize Economic Impact on Small Entities and Significant Alternatives Considered

10. In the Second FNPRM, the Commission seeks to gather relevant information from all interested parties, including small business entities, about the effect of requiring equal access conversion, even by those LECs that have not received a request for it, or whose end offices are not equipped with SPC switches. We ask that commenters opposed to our tentative conclusion suggest alternatives. See Second FNPRM at paras. 84-85.

11. In addition, here, we tentatively conclude that the proposals in the Second FNPRM would impose minimum burdens on small entities, especially given that: (1) the Commission, in the Independent Telephone Company Equal Access Report and Order, adopted over twelve years ago expressed a general desire that equal access occur as soon as practicable, regardless of whether a request has been made for equal access, and regardless of the type of switch with which an end office is equipped, and stated that where generic software is available, the telephone company should endeavor to make the necessary conversions in less than three years; and (2) the responses to inquiries by Commission staff also indicate that the four-digit CIC software generally is included in equal access software packages developed since 1995. We seek comment here on this tentative conclusion.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

12. None.